UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/821,043	BERSTIS, VIKTORS
	Examiner	Art Unit	
	Mushfikh Alam	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 April 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-29</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to. .

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>08 April 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>9/8/06</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

> Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

> When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

> In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 13-16 is/are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 13-16 define a "computer program product having a medium with a computer program embodied thereon" embodying functional descriptive material. However, the claim does not define a computer-readable medium that is executed and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable

medium and executed by a computer it becomes structurally and functionally

interrelated to the medium and will be statutory in most cases since use of technology

permits the function of the descriptive material to be realized" – Guidelines Annex IV).

That is, the scope of the presently claimed "computer program product having a

medium with a computer program embodied thereon" can range from paper on which

the program is written, to a program simply contemplated and memorized by a person.

The examiner suggests amending the claim to embody the program on "computer-

readable medium with a computer program embodied thereon that is executed" or

equivalent in order to make the claim statutory.   Any amendment to the claim should be

commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Logan

et al. (2006/0218579).

Claims 1 and 11, Logan teaches a system for screening broadcast programming, comprising:

- a viewer (user) configured to receive broadcast programming (broadcast programming signal) and to present the received broadcast programming to a user (paragraph [0039]);

- an interface (42) configured to receive user input from a user, the user input comprising at least a content of interest start time (marking signal) based on the received broadcast programming (paragraph [0049]); and

- a processor (34) coupled to the interface and configured to store (in editing unit memory) the user input (marking signals) and to generate a screening signal based on the user input (signal denoted time stamps based on marking signals) (paragraph [0049]).

Claim 2, Logan teaches the system as recited in claim 1, further comprising a broadcast recorder coupled to the viewer and configured to store the received broadcast programming (paragraph [0039]).

Claim 3, Logan teaches the system as recited in claim 1, further comprising a plurality of interfaces coupled to the processor (system can be designed to work with large audiences) and configured to receive user input from a user, the user input comprising at least a content of interest start time (marking signals) based on the broadcast programming (paragraph [0039]).

Claim 4, Logan teaches the system as recited in claim 1, wherein the processor is further configured to compile user input (translate markings to time stamps) received from a plurality of users (many users can be on the network) (paragraph [0049]).

Claim 5, Logan teaches the system as recited in claim 1, further comprising a client interface coupled to the processor and configured to receive client input from a client user (operator can be user of system), the client input comprising at least a content of interest preference (news items) (paragraph [0049]).

Claim 6, Logan teaches the system as recited in claim 5, wherein the processor is further configured to generate a screening signal based (time stamps) on the user input (markings) and the client input (paragraph [0049]).

Claim 7, Logan teaches the system as recited in claim 1, wherein the screening signal is a real -time screening signal (time stamps are performed on real time broadcasts) (paragraphs [0049]-[0050]).

Claim 8, Logan teaches the system as recited in claim 1, wherein the screening signal is a precision screening signal (precise marking signals) (paragraph [0049]).

Claims 9 and 12, Logan teaches the system as recited in claim 1, wherein the screening signal is a freelance screening signal (signal provided by a user) (paragraph [0049]).

Claim 10, Logan teaches the system as recited in claim 1, wherein the viewer is configured to present audio broadcast programming to the user (system maybe be employed with audio broadcast programming) (paragraph [0037]).

Claim 13 recites computer program code to perform the steps of claim 1. It is inherent that Logan teaches computer program code to perform the steps of claim 1 as noted above.

Claim 14 recites computer program code to perform the steps of claim 7. It is inherent that Logan teaches computer program code to perform the steps of claim 7 as noted above.

Claim 15 recites computer program code to perform the steps of claim 8. It is inherent that Logan teaches computer program code to perform the steps of claim 8 as noted above.

Claim 16 recites computer program code to perform the steps of claim 9. It is inherent that Logan teaches computer program code to perform the steps of claim 9 as noted above.

3.   Claims 17-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Maissel et al. (6637029).

Claim 17, Maissel teaches a method for screening broadcast programming, comprising:

- generating preference information (viewing behavior) based on input from a user (what the viewer watches), the preference information comprising at least a content of interest segment type (program characteristics) (column 11, lines 56-59 and column 12, lines 16-23);

- receiving broadcast programming on a broadcast channel with an associated identifier (viewer identification information), the broadcast programming comprising at least a COI segment (whether or not the user changes the channel will indicate the channel being view is content of interest) (column 16, line 26-column 17, line 16);

- monitoring the broadcast programming (identifying programs based on viewer preference profile) for at least a COI segment start time (times based on rules, i.e. 8:00) of the COI segment type (news) (column 18, lines 1-25);

- generating a first session information (preferred programs) based on the received broadcast programming, the first session information comprising at least the broadcast channel associated identifier (channel 86) (see alert screen of fig. 1);

- generating a first COI segment information (international news) based on at least the COI segment start time (23:00) (fig. 1); and

- generating a screening signal (whether the user reacted to the alert or not) based on the first session information (preferred programs) and the first COI segment information (alert) (column 18, lines 26-40).

Claim 18, Maissel teaches the method as recited in claim 17, further comprising generating a screening signal (user reaction to alert) based on the first session information (preferred program), the first COI segment information (alert), and the preference information (viewer profile information). Preferred programs are based on viewer profile information, which is constantly updated (column 15, lines 46-55 and column 18, lines 26-40).

Claim 19, Maissel teaches the method as recited in claim 17, further comprising generating a second COI segment information (another news programs) based on the COI segment start time (8:00) (fig. 9f; column 20, lines 3-12).

Claims 20 and 24, Maissel teaches the method as recited in claim 19, further comprising compiling the first COI segment information (one news program) and the second COI segment information (a second news program) to generate a reconciled COI information (updated profile information i.e. strength). Every program a viewer watches affects the viewer profile. Mainly, the strength of the program viewed will increase as it is viewed (column 12, lines 35-41)

Claims 21 and 25, Maissel teaches the method as recited in claim 20, further comprising generating a screening signal (updated strength) based on the reconciled COI information (updated profile information) and the preference information (viewer preferences) (column 12, lines 35-41, column 20, lines 3-17).

Claim 22, Maissel teaches the method as recited in claim 17, wherein

- the first session information (preferred programs) further comprises at least a first screener identification code (user to which the preferred programs are to be transmitted to based on viewer identification information) (column 11, line 65-column 12, line 5); and
- further comprising generating a second session information (preferred news program) based on the received broadcast programming, the second session information (another preferred

news program) comprising at least the broadcast channel associated identifier (channel

number) and a second screener identification code (another users profile information) (figs 1,

5, 9g; column 13, lines 35-47 and column 20, lines 3-17.

Claim 23, Maissel teaches the method as recited in claim 22, further comprising

generating a second COI segment information (another news programs at 8:00) based

on the COI segment start time (8:00) and the second session information (preferred

programs) (figs. 9h-9k; column 20, lines 3-16).

Claim 26, Maissel teaches the method as recited in claim 17, wherein the

screening signal is a real -time screening signal (user reaction in real-time) (column 18,

lines 26-40).

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Maissel et al. (6637029) in view of Logan et al. (2006/0218579).

Claim 27, Maissel teaches the method as recited in claim 17, further comprising:

- storing the received broadcast programming to generate stored broadcast programming (column 10, lines 47-53);

Maissel is silent regarding the method as recited in claim 17, further comprising:

- monitoring the stored broadcast programming for at least a COI segment start time of the COI segment type;

- generating a second COI segment information based on at least the COI segment start time; and

- generating a screening signal based on the second COI segment information.

Logan teaches the method further comprising:

- monitoring the stored broadcast programming for at least a COI segment start time (based on markings) of the COI segment type (paragraph [0050]);

- generating a second COI segment information (additional information regarding commercials) based on at least the COI segment start time (marking to delete commercials) (paragraphs [0049]-[0050]); and

- generating a screening signal (commercial sequence) based on the second COI segment information (paragraphs [0049]-[0050]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided monitoring of stored programming as taught by Logan to the intelligent monitoring system of Maissel to enable users to edit stored content (paragraph [0049]).

Claim 28, Maissel teaches the method further comprising generating a screening signal (updated strength) based on the second COI information (updated profile information) and the preference information (viewer preferences) (column 12, lines 35-41, column 20, lines 3-17).

Claim 29, Logan teaches the method wherein the screening signal is a precision screening signal (precise marking signals) (paragraph [0049]).

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mushfikh Alam whose telephone number is (571) 270-1710. The examiner can normally be reached on Mon-Fri: 8:30-18:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA
9/13/2007

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